

**COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
AND SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Holiday Inn-North
2805 Highwoods Blvd., Raleigh, N.C. 27604**

Thursday, July 13, 2006

Attending:

Commission for MH/DD/SAS Members: Floyd McCullouch, Anna Scheyett, Pender McElroy, Lois Batton, Pearl Finch, Mazie Fleetwood, Martha Martinat, Connie Mele, Jerry Ratley, Laura Coker, Clayton Cone, Dorothy Crawford, Ann Forbes, Emily Moore, Fredrica Stell, Ellen Russell, and Buren Harrelson

Ex-officio Members: Joe Donovan and Janet Schanzenbach

Excused: None

Division Staff: Steven Hairston, Denise Baker, Cindy Kornegay, Jason Reynolds, Stuart Berde, Johnny Womble, Sonya Brown, and Vanessa Holman

Others: Christine Trottier, John Crawford, Brandy Wages

Handouts:

Mailed Packet:

1. July 13, 2006 Rules Committee Agenda
2. April 13, 2006 Rules Committee Meeting Draft Minutes
3. 10A NCAC 27G .3803 Alcohol and Drug Education Traffic Schools (ADETS)
4. 10A NCAC 26E .0600 Controlled Substances Reporting System
5. 10A NCAC 27I .0600 Non-Medicaid Appeal Process
6. Non-Medicaid Appeal Process Comment Grid
7. Statute and Rule Reference Material

Additional Handouts:

1. Pages 59-62 for 10A NCAC 26E .0600 Controlled Substances Reporting System
2. Controlled Substances Reporting System Comments submitted by Andy Ellen of the NC Retail Merchants Association
3. Summary of Statutes Regarding Client Rights submitted by Diane Pomper, Attorney General's Office

Call to Order:

Chairman, Floyd McCullouch opened the meeting at 9:40 a.m.

Mr. McCullouch asked the Commission members, Ex-officio members, Division staff and visitors to introduce themselves and requested a moment of silence for the troops deployed overseas and victims of Hurricane Katrina. Mr. McCullouch asked Co-Chair Anna Scheyett to continue facilitation of the meeting.

Approval of Minutes:

Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the April 13, 2006 Rules Committee meeting without changes.

10A NCAC 27G .3803 Alcohol and Drug Education and Traffic School (ADETS):

Jason Reynolds of the DMH/DD/SAS DWI Unit, Justice Innovations Team presented the proposed rule amendments for the Alcohol and Drug Education Traffic Schools (ADETS).

Session Law 2005-312 directed the Commission for MH/DD/SAS to amend its rules regarding the number of instructional program hours and the class size for ADETS.

Mr. Reynolds reviewed the proposed amendments of 10A NCAC 27G .3803 (b) and (i), increasing the number of hours of program instruction from 10 hours to 16 hours and reducing the class size from a maximum of 35 to 20 individuals. The comment period ends August 14, 2006. No comments have been received to date.

Martha Martinat requested the Division provide data at a future meeting regarding the recidivism rate of individuals after completing an ADETS program. Mr. Reynolds stated he could provide this information. Mr. McCullough raised concerns about the increased cost of the ADETS program, and the financial burden it may place on individuals.

Upon motion, second and with one dissenting vote, the Committee approved the proposed amendment of 10A NCAC 27G .3803 to be forwarded to the full Commission for final action with no additional changes recommended.

10A NCAC 26E .0600 Controlled Substances Reporting Systems:

Johnny Womble, consultant to the DMH/DD/SAS Justice Innovations Team, presented the proposed rules for the Controlled Substances Reporting System. Session Law 2005-276 included legislation that instructs the Department of Health and Human Services to establish a reporting system of prescriptions for all Schedule II through V controlled substances. It is intended to improve the State's ability to identify controlled substance abusers or misusers, refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

Mr. Womble reviewed the comments submitted by Andy Ellen, General Counsel to the North Carolina Retail Merchants Association. Division staff will prepare responses to the comments received to share with Commission members. The comment period ends August 14, 2006. No other comments have been received to date.

Ms. Martinat requested a list of the substances contained in the controlled substances schedules. Pender McElroy suggested staff address the request by sending copies of the statutes containing the controlled substances to Commission members.

Ann Forbes requested information concerning results reported by other states where reporting systems have been implemented. Mr. Womble stated he can provide a summary of information concerning controlled substances reporting systems in other states.

Ms. Scheyett made the point that this rule, and the statute supporting it, address the need for a system to track and report all prescriptions for Schedule II through V controlled substances, but do not identify a process for utilization of this information. Mr. Womble agreed, and stated that the Division was creating a committee to develop such a process, which would address both the clinical and legal aspects of the issue. The Commission discussed this and offered that a member of the Commission could also sit on this committee. Ms. Forbes specifically requested that the Commission be sent draft copies of implementation policy or protocol documents as they are being developed.

Committee members were also reminded that the proposed rules require the Department to provide reports to the Commission concerning the outcomes of implementation. The reports are due six and twelve months after the reporting system is implemented.

Upon motion, second and unanimous vote, the Rules Committee approved the proposed adoption of 10A NCAC 26E .0600 to be forwarded to the full Commission for final action with no additional changes recommended.

10A NCAC 27I .0601 Non-Medicaid Appeal Process:

Stuart Berde, Team Leader of the DMH/DD/SAS Customer Services Team, presented the proposed rules for the Non-Medicaid Appeals Process. Session Law 2005-276, Section 10.35 directs the Commission for MH/DD/SAS to adopt rules governing the appeals process.

The proposed adoptions provide a non-Medicaid eligible consumer the opportunity to appeal decisions made by area/county programs to deny, suspend, reduce or terminate state funded services to the Director of DMH/DD/SAS.

The comment period for the proposed rules ended on June 16, 2006. A copy of the comments received and the Division's responses was included in the meeting information mailed to Commission members prior to the meeting. Ms. Scheyett asked for discussion of CPDMI's comments requesting that violations of client rights be added to this rule language, and requested that Diane Pomper of the Attorney General's Office provide the Committee with information concerning statutes governing client rights protections. Ms. Pomper addressed the Committee and provided a handout summarizing the statutes governing client rights protections. Mrs. Coker addressed Ms. Pomper commenting that according to consumers and families, there were in fact not adequate processes in place at the state level for client's rights issues. This was in response to the statement written in the comment grid mailed to Commission members ahead of the meeting on the part of Division staff replying to a concern raised by J. Sullivan related to client rights. The Commission agreed that since client rights protections are addressed elsewhere in statute and rule it is not necessary to include violation of client rights in this rule.

Upon motion, second and unanimous vote, the Rules Committee approved the proposed adoption of 10A NCAC 27I .0600 to be forwarded to the full Commission for final action with no additional changes recommended.

Other Business:

Mr. McElroy brought a recommendation from Ms. Emily Moore to the Committee for consideration. Ms. Moore suggested the Commission may want to schedule the Advisory and Rules Committee meetings on the same day next year since there have been recent meetings that have been completed in approximately one half of a day. Several Commission members thought it would be more efficient. Mr. McCulloch suggested starting one committee meeting in the afternoon to allow the Commission member more time to drive to Raleigh, stay overnight and start the other Committee meeting in the morning of the second day. Steve Hairston Chief, DMH/DD/SAS Operation Support Section suggested the Commission may not want to limit their available meeting times to half days because of the anticipated workload for both groups in the upcoming year. Mr. McElroy requested members give additional thought to the proposal and will bring it up for the full Commission to consider.

Mr. McElroy requested adding Janet Schanzenbach of the NC Council of Community Programs to the ex-officio roster for the Rules Committee.

Clayton Cone asked about the status of Deby Dihoff's position as an ex-officio member of the Rules Committee. Mazie Fleetwood and Janet Schanzenbach clarified that Ms. Dihoff had been an ex-officio member because of her role as Chair of the NC Council's Rules Committee and that the position is currently vacant. Mr. McElroy requested that Ms. Schanzenbach discuss with the new Executive Director the request for the new chair, when named, to serve as an ex-officio member.

Mr. McElroy read a letter from Rich Slipsky, Attorney General's Office, clarifying the authority of the Commission regarding the sale of pseudoephedrine products in retail establishments and the charge to the Commission to develop a training curriculum for the non-pharmacy retail establishments selling pseudoephedrine products.

Ms. Martinet requested the Committee recommend to the full Commission that a resolution be drafted concerning the need for coordination between the Department of Public Instruction (DPI) and

DMH/DD/SAS. Christine Trottier, Carolina Legal Assistance suggested the Committee may want to hear from Diane Irwin, DPI concerning current collaborative efforts before drafting language for a resolution.

Mr. McCulloch recommended a letter of thank you to Carol Duncan Clayton, past Executive Director of the NC Council of Community Programs for her contributions to the work of the Commission. Committee members concurred and Mr. McElroy agreed to prepare a letter.

There being no further business the meeting adjourned at 11:30 a.m.

1 10A NCAC 27G .3803 is proposed for amendment as follows:

2 **10A NCAC 27G .3803 OPERATIONS**

3 (a) Curriculum. School instructors shall follow the requirements in G.S. 122C-142.1.

4 (b) The program of instruction shall consist of not less than ~~ten~~ 16 hours of classroom
5 instruction.

6 (c) Each school may provide up to three additional hours for classroom time and such activities
7 as an initial student assessment, data gathering or a summary conference with students.

8 (d) Class Schedule. Each school shall provide a written notice to each student referred by the
9 court as to the time and location of all classes which the student is scheduled to attend.

10 (e) Each student shall be scheduled to attend the first and the last class sessions in the order
11 prescribed in the curriculum.

12 (f) Classes shall be scheduled to avoid the majority of employment and educational conflicts.

13 (g) Each school shall have a written policy which allows for students to be excused from
14 assigned classes by the instructor provided that the excused absence is made up and does not
15 conflict with Subparagraph (b)(1) of this Rule.

16 (h) No class session shall be scheduled or held for more than three hours excluding breaks on
17 any day or evening.

18 (i) Class Size. Class size shall be limited to a maximum of ~~35~~ 20 persons.

19 (j) Requirements contained in 10A NCAC 27G .3800 SUBSTANCE ABUSE SERVICES FOR
20 DWI OFFENDERS ~~10A NCAC 29D .0600 SUBSTANCE ABUSE ASSESSMENTS FOR~~
21 ~~INDIVIDUALS CHARGED WITH OR CONVICTED OF DRIVING WHILE IMPAIRED~~
22 ~~(DWI)~~ shall be followed by anyone who provides DWI assessments.

23 (k) DWI Services Certificates of Completion. The original copy of the North Carolina
24 Department of ~~Human Resources~~ Health and Human Services DWI Services Certificates of
25 Completion shall be forwarded to DMH/DD/SAS for review within two weeks of completion
26 of all services.

27
28 *History Note: Authority G.S. 20-179; 20-179.2; 143B-147;*
29

1 **SECTION .0600 CONTROLLED SUBSTANCES REPORTING SYSTEM**

2
3 **10A NCAC 26E .0601 is proposed for adoption as follows:**

4 **10A NCAC 26E .0601 SCOPE**

5 The rules of this Section as well as the provisions of Chapter 90.1, Article 5D shall govern
6 requirements for the controlled substances reporting system as set forth in G.S. 90-113.70.

7
8 *Authority G.S. 90-113.70; 90-113.76.*

1 **10A NCAC 26E .0602 is proposed for adoption as follows:**

2 **10A NCAC 26E .0602 DEFINITIONS**

3 (a) As used in this Section, the following terms shall have the meanings as specified:

4 (1) “Controlled substance reporting system” means the reporting system as set forth in
5 Article 5E of Chapter 90.

6 (2) “ASAP” means the American Society for Automation in Pharmacy.

7 (b) Any term not defined in this Section shall have the same definitions as set forth in G.S. 90-87
8 and 90-113.72.

9
10 *Authority G.S. 90-113.70; 90-113.76.*
11
12

1 **10A NCAC 26E .0603 is proposed for adoption as follows:**

2 **10A NCAC 26E .0603 REQUIRED REPORTING REQUIREMENTS**

3 (a) All dispensers as defined by G.S. 90-113.72(4) shall submit data to the Department on the
4 dispensing of controlled substances in Schedules II thru V.

5 (b) A dispenser of a Schedule II, III, IV or V controlled substance shall report the data as set
6 forth in G.S. 90-113.73(b).

7
8 *Authority G.S. 90-113.70; 90-113.73(b); 90-113.76.*
9

1 **10A NCAC 26E .0604 is proposed for adoption as follows:**

2 **10A NCAC 26E .0604 REQUIREMENTS FOR TRANSMISSION OF DATA**

- 3 (a) Each dispenser shall transmit to the Department the data as set forth in GS 113.73. The data
4 shall be transmitted in the most recent format as set forth in the ASAP Telecommunication
5 Format for Controlled Substances, published by the American Society for Automation in
6 Pharmacy.
- 7 (b) The dispenser shall transmit the data electronically unless the Department approves a request
8 for submission on paper as set forth in Paragraphs (e) and (f) of this Rule.
- 9 (c) The dispenser's electronic transfer data equipment including hardware, software and internet
10 connections shall be in compliance with the Health Insurance Portability and Accountability
11 Act as set forth in 45 CFR, Part 164.
- 12 (d) Each electronic transmission shall meet data protection requirements as follows:
13 (1) Data shall be at least 128B encryption in transmission and at rest; or
14 (2) Data shall be transmitted via secure file transfer protocol. Once received, data at rest
15 shall be encrypted.
- 16 (e) The data may be submitted on paper, if the dispenser submits a written request to the
17 Department and receives prior approval.
- 18 (f) The Department shall consider the following in granting approval of the request:
19 (1) The dispenser does not have a computerized record keeping system.
20 (2) The dispenser is unable to conform to the submission format required by the
21 database administrator without incurring undue financial hardship.
- 22 (g) The dispenser shall report the data on the 30th day of each month for the first 12 months of
23 the system's operation, and on the 15th day and 30th day of each month thereafter. If the 15th
24 or the 30th day does not fall on a business day the dispenser shall report the data on the next
25 following business day.
- 26 (h) The Department shall provide reports to the Commission concerning the outcomes of
27 implementation of the controlled substances reporting system. The reports shall be made to
28 the Commission six and 12 months after the reporting system is implemented.

29
30 *Authority G.S. 90-113.70; 90-113.73; 90-113.76.*

1 **10A NCAC 10A NCAC 27I .0601 is proposed for adoption as follows:**

2 **10A NCAC 10A NCAC 27I .0601 SCOPE**

- 3 (a) The rules of this Section shall govern appeals made to the Division of decisions made by an
4 area authority or county program affecting a non-Medicaid eligible client.
- 5 (b) A non-Medicaid eligible client may appeal to the Director the review decision of an area
6 authority or county program to deny, reduce, suspend, or terminate a non-Medicaid state
7 funded service.
- 8 (c) An appeal shall be filed with the Division only after a client has received a review decision
9 from the area authority or county program.
- 10 (d) Nothing in these rules shall be interpreted as granting a non-Medicaid eligible client the right
11 to appeal decisions of third party payers to the Division.
- 12 (e) As set forth in G.S. 143B-147(a)(9), nothing in these rules shall be interpreted as granting a
13 non-Medicaid eligible client the right to appeal the findings of the Division by requesting a
14 contested case hearing pursuant to G.S. 150B.
- 15 (f) There shall be no reprisal or retaliation to anyone who is a party to an appeal.
- 16 (g) The area authority or county program may authorize interim services until the final written
17 decision as set forth in Rule .0609 of this Section is reached.

18
19 *Authority G.S. 143B-147;*
20

1 **10A NCAC 27I .0602 is proposed for adoption as follows:**

2 **10A NCAC 27I .0602 DEFINITIONS**

3 As used in the rules in this Section, the following terms shall have the meanings specified:

4 (1) “Director” means the Director of the Division of Mental Health, Developmental
5 Disabilities and Substance Abuse Services.

6 (2) “Division” means the Division of Mental Health, Developmental Disabilities and
7 Substance Abuse Services.

8
9 *Authority G.S. 143B-147;*

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11

12

1 **10A NCAC 27I .0603 is proposed for adoption as follows:**

2 **10A NCAC 27I .0603 FILING REQUIREMENTS**

3 (a) An appeal shall be filed with the Division no later than 11 calendar days from the date of the
4 area authority or county program written review decision.

5 (b) The appeal shall include a copy of the area authority or county program review decision and
6 a request for appeal on a form provided by the Division.

7 (c) A verbal appeal shall not be accepted.

8
9 Authority G.S. 143B-147.

1 **10A NCAC 27I .0604 is proposed for adoption as follows:**

2 **10A NCAC 27I .0604 CHANGE IN CLIENT CONDITION**

3 If the client's medical condition changes relative to the service under appeal, the appeal shall be
4 returned to the area authority or county program for review.

5
6 Authority G.S. 143B-147.

1 **10A NCAC 27I .0605 is proposed for adoption as follows:**

2 **10A NCAC 27I .0605 INITIAL RESPONSE TO A DMH/DD/SAS APPEAL**

- 3 (a) The Director shall screen the request for appeal to the Division to determine:
4 (1) if the appeal was reviewed by the area authority or county program according to the
5 area authority or county program policy and procedures; and
6 (2) if the appeal includes the denial, reduction, suspension or termination of a non-
7 Medicaid state funded service.
8 (b) The Director shall send an acknowledgement letter to the client and the area authority or
9 county program within 5 business days of receipt of the request for appeal to the Division.
10 (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The
11 Division shall accept an appeal if it meets the standards as set forth in Paragraph (a) of this
12 Rule.
13 (d) The Director shall notify the area authority or county program and the client whose appeal is
14 accepted for review to forward all documentation considered during the area authority or
15 county program review to the Division no later than 10 calendar days from the date of the
16 acknowledgement letter. The acknowledgment letter shall advise the parties that a panel will
17 be convened to conduct a hearing.
18 (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be
19 returned to the client as disqualified with an explanation of the basis for disqualification.
20 (f) The area authority or county program shall review the appeal, if the appeal made to the
21 Division is disqualified on the basis of not having been reviewed according to the area
22 authority or county program's policy and procedures.
23 (g) The client shall have 11 calendar days from the date of the area authority or county program
24 review decision to resubmit the appeal to the Division.

25
26 *Authority G.S. 143B-147;*

1 **10A NCAC 27I .0606 is proposed for adoption as follows:**

2 **10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE**
3 **PANEL**

4 (a) The Director shall convene a five member panel to conduct a hearing for an appeal that is
5 accepted in accordance with the requirements of Rule .0605 of this Section.

6 (b) The panel members shall consist of the following:

7 (1) a provider agency representative who meets the following requirements:

8 (A) the representative shall be from a provider agency that is not a party to the
9 appeal; and

10 (B) the representative shall have clinical expertise in the disability area pertinent
11 to the appeal.

12 (2) an employee of an area authority or county program who meets the following
13 requirements:

14 (A) the employee shall be from an area authority or county program that is not a
15 party to the appeal; and

16 (B) the employee shall have clinical expertise in the disability area pertinent to the
17 appeal.

18 (3) two individuals who are members of a consumer and family advisory committee who
19 is not a party to the appeal; and

20 (4) an employee of the Division.

21 (c) The employee of the Division shall serve as the chairperson of the panel and shall be a voting
22 member in case of a tie.

23 (d) The Director shall forward the record on appeal and all supplemental documentation to the
24 chairperson of the panel within 5 days of receipt thereof.

25 (e) The Director shall provide a copy of applicable law, policy, and procedures to the
26 chairperson of the panel.

27 (f) The chairperson shall schedule a panel hearing including designation of a time and place.

28 (g) The chairperson shall notify the client, other panel members and the area authority or county
29 program of the time and place no less than 15 calendar days prior to the date of the hearing.

30
31 *Authority G.S. 143B-147;*

1 **10A NCAC 27I .0607 is proposed for adoption as follows:**

2 **10A NCAC 27I .0607 PANEL HEARING PROCEDURES**

3 (a) The chairperson of the panel:

4 (1) shall convene the hearing at the prearranged time and place;

5 (2) may afford the opportunity for rebuttal and summary comments to either of the
6 presenting parties; and

7 (3) shall conduct proceedings in an orderly manner.

8 (b) The panel:

9 (1) may limit the total number of persons presenting for the client and area authority or
10 county program; and

11 (2) may impose time limits for presentations.

12 (c) Either party may be represented by a person or attorney of their choice.

13 (d) Prior to the hearing, the client and the area authority or county program shall:

14 (1) specify by name and position all individuals who will be present for the hearing;

15 (2) provide the panel with requested information; and

16 (3) when applicable, ensure that representatives of the parties shall be present at the
17 hearing.

18 (e) Any member of the panel may address questions to either party.

19 (f) The panel may obtain any form of technical assistance or consultation relevant to the appeal.

20 (g) No transcript shall be made and no party shall be allowed to record the proceeding. The
21 panel may choose to record the proceeding for its own use. A tape so made shall be
22 destroyed after the panel issues its decision.

23 (h) Witnesses shall not be sworn before testifying.

24
25 *Authority G.S. 143B-147;*

1 **10A NCAC 27I .0608 is proposed for adoption as follows:**

2 **10A NCAC 27I .0608 PANEL DECISION FINDINGS**

3 (a) The panel findings and decisions are based on the record and any new evidence that would be
4 material to the issues on appeal.

5 (b) The standard of review for the panel is whether the decision of the area authority or county
6 program is supported by evidence presented.

7 (c) The panel shall vote on each specific item being appealed.

8 (d) Findings and decisions of the panel shall be by majority vote.

9 (e) Any decision may be rescheduled for a subsequent meeting if the panel determines that it
10 lacks sufficient information to render a decision at the initial hearing.

11 (f) All panel findings and decisions shall be reached and sent in writing within 60 days of the
12 written request for appeal to the client, the area authority or county program and the Director.

13
14 *Authority G.S. 143B-147;*

1 **10A NCAC 27I .0609 is proposed for adoption as follows:**

2 **10A NCAC 27I .0609 FINAL WRITTEN DECISION**

3 (a) Upon receipt of the panel's findings and decisions, the area authority or county program shall
4 issue a final decision based on those findings. The area authority or county program shall
5 issue the decision in writing within 10 days of receipt of the panel's findings and decisions.

6 (b) Neither the panel findings and decisions nor the area authority or county program final
7 decision shall be interpreted as an agency decision granting a non-Medicaid eligible client
8 the right to appeal by requesting a contested case hearing pursuant to G.S. 150B.

9
10 *Authority G.S. 143B-147;*